

Chapter 8

CONSUMER PROTECTION IN THE PROCESS OF EUROPEAN UNION ENLARGEMENT: CHALLENGES FOR CROATIA

Aida Liha

*Institute for International Relations
Zagreb*

ABSTRACT

This paper gives an overview of three important aspects of consumer protection in the process of adjustment to the standards and norms of the European Union (EU): aspects concerning legislation and implementation, and, last but not least, the aspect of consumer representation. On the basis of experiences of accession countries (Hungary, Slovakia and Bulgaria) in their alignment with European Community (EC) consumer protection, this paper recalls the initial lack of any reliable tradition, also pointing out, however, the significant results made in this sector in the future Member States of the European Union. The main rationale is that, like in most of the accession and candidate countries, the law on consumer protection in Croatia represents only the starting point in the achievement of high standards of protection of consumer health and safety.

Key words:

consumer protection, consumer policy, Croatia, accession countries, Stabilisation and Association Agreement, European Union, the *acquis*

INTRODUCTION

Harmonisation with consumer protection rules constitutes one of the conditions for the elimination of market barriers and for market

integration that includes the circulation of goods and services with the same standards of safety and quality. In addition, the right of consumers to protection today represents one of the fundamental civic rights. Against this background, it is clear that the issue of consumer protection and its benefits, *inter alia*, for market transparency and fair competition, as well as in connection with the obligations arising from the Stabilisation and Association Agreement (SAA), have not been sufficiently discussed in Croatia. Not less important, no discussion on the basis of the experience gained by the accession countries in their adjustment to the legal heritage of the European Community (the *acquis*) in the field of consumer policy has been initiated.

Hence, one of the purposes of this paper is to examine the tasks placed before different institutions and organisations in Croatia in the light of obligations assumed consequent upon the signing of the SAA in the area of consumer protection. This requires examination of both the latest developments in EC consumer policy and the plethora of principles that characterise this field and its latest trends (Chapter 1).

After a general overview, in Chapter 2 the paper further presents the experiences of the development of consumer policy in the accession countries, especially the difficulties and challenges that follow upon the enforcement of consumer protection law. In this sense, a parallel will be drawn between three countries soon to become EU Member States (Hungary, Slovakia and Bulgaria), and the general characteristics of the process of adoption of consumer protection standards in the given environment of a society in transition will be indicated. Finally, Chapter 3 gives an overview of the first legal basis for the protection of consumers in Croatia - the Law on Consumer Protection (NN 96/2003) - through the three aspects mentioned at the beginning and the tasks to be realised in the initial phase of its enforcement.

Because of the constraints of space, this paper inevitably falls into the trap of offering a simplistic and reduced overview of the exhausting field of consumer protection. Nevertheless it will reflect its final rationale - the long awaited Law on Consumer Protection is not the end but the beginning of a long-term process of formation of consumer-friendly society in Croatia.

CONSUMER PROTECTION IN THE EUROPEAN UNION

Consumer protection covers economic, legal and health and food safety issues related to consumer, consumer information and edu-

cation and the contribution of consumer associations to the development of consumer policy and the market economy in general.ⁱ Right at the beginnings, the 1957 Treaty of Rome constituted an unfavourable legislative background to the field of consumer protection, containing only four explicit references to the consumer, related to the common agricultural policy, its organisation and abusive conduct by dominant firms. None of them reflect an attempt to develop a sophisticated structure of consumer interests or rights, rather the assumption that the consumer will benefit from the process of integration through the enjoyment of a more efficient market, which will yield greater competition, allowing wider choice, lower prices and higher quality products and services (Weatherill, 1997). Consumer protection has therefore for a long time been characterised as a policy subordinated to the completion of the European internal market, since measures for consumer protection have been taken through harmonisation directives narrowly linked with the internal market (Stuyck, 2000).ⁱⁱ The first recognition of the protection of consumers was introduced by the Council Resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy (Official Journal C92/1, 1975), endorsing five categories of fundamental rights of consumers:ⁱⁱⁱ

- Right to protection of health and safety – the use of goods and services should not present any danger if used in normal conditions. If a product or service is found to be dangerous, a proper procedure should provide for its withdrawal from the market.
- Right to protection of economic interests – the buyer must be protected against certain selling practices, especially in the field of loans and such.
- Right of redress and right to legal remedy.
- Right to information and education – the consumer must be informed on the characteristics and the use of products and services.
- Right of representation (the right to be heard) – consumers must be represented in other EU policies.

The 1975 Resolution constituted the formal inauguration of the consumer protection and information policy of the Community, and although it was directed at economic integration, it still represents the basis of today's Community legislation in the area of consumer protection. From the perspective of consumer interests, the project of economic integration got its "human face" in the 1991 Treaty of Maastricht, which introduced the separate Title XI (Article 129a) devoted to con-

sumer protection, and for the first time gave full legitimacy to an autonomous consumer policy empowering Community action in the consumer protection field. However, it was only the 1996 Treaty of Amsterdam that liberated consumer policy from its linkage with internal market legislation. Why was this so?

The new Article 129a (Article 153 after renumbering) gave the Community the task of contributing to the protection of the health, safety and economic interests of consumers, as well as the promotion of their rights to information, education and organisation in order to safeguard their interests. The attainment of those objectives should be pursued through measures adopted in the context of the completion of the internal market, and measures that support, supplement and monitor the policy pursued by the Member State. The Treaty further clearly recognises the *right* of consumers to information, education and organisation. Since consumer rights were never previously recognised as a (subjective) *right*, but merely as an *interest* to be taken care of, this can be regarded as one of the main contributions of the Amsterdam Treaty.

That consumer policy has recently been ascribed increased importance was demonstrated in the 2003 draft version of the new Treaty establishing a Constitution for Europe. The draft Treaty addresses consumer protection in Article 13, and places it in the Union's area of shared competence, that is, in the same group with policies such as the internal market, the area of freedom, security and justice, environment and transport. In the light of social, scientific and technological changes, the Charter of Fundamental Rights of the Union, incorporated in the draft Treaty, included the obligation of Union policies to ensure a high level of consumer protection into one of the Union's fundamental rights, freedoms and principles (Draft Treaty, 2003).

Nevertheless, one of the main ideas of this paper is to explore the characteristics of consumer protection in the context of EU enlargement. Therefore it is necessary to outline some of the principles which shape this policy and, according to it, the process of the approximation to its norms and standards. The obligation of harmonisation with the *acquis* simply means the adoption of all the standards that are in force at the EC level. EC consumer protection aims at guaranteeing consumer rights, *inter alia*, by its principles of horizontal implementation, subsidiarity and the principle of minimum harmonisation. Horizontal implementation implies that consumer protection requirements should be taken into account when defining and implementing other policies that have an impact on consumers. The principle of subsidiarity implies

that EC action in the field of consumer protection is to complement, rather than replace, national regulation on consumer protection. The last principle of minimum harmonisation is common to many consumer protection directives. Rather than setting a single Community rule as both floor and ceiling, the Community measure acts as a floor, but the ceiling is set only by primary Community law (Weatherill, 1997). In other words, Member States are given the possibility to maintain or introduce stricter rules of consumer protection in their territory that are compatible with Community law. The attraction of the “minimum formula” and of subsidiarity lies in their capacity to reflect the cultural heterogeneity of the Member States, avoiding the risk that Community measures may suppress well-developed national initiatives in the field of consumer protection (Weatherill, 1997). Since directives represent instruments of minimum harmonisation, usually it is the result of compromises of the Member States to harmonise their consumer protection systems, which as an outcome has some unfavourable effects (Stuyck, 2000), such as the inconsistent consumer protection legislation and the different level of development of consumer protection in the EU Member States. Although the trend reflected in the three principles might cause the fragmentation of the Community market (which is actually happening), it may also be seen as an attempt to accommodate the diverse national traditions of the EU Member States.

Beyond its legal aspects, the policy aspects of consumer protection will serve indirectly to illuminate the aspects of institutions and consumer representation. In an attempt to adjust consumer policy to the current challenges, the European Commission regularly presents its plans for the development of consumer priorities in the form of *Action Plans*. These documents lay down general principles and objectives and determine the direction of the EC consumer policy, and, could therefore be understood as some sort of general national plans for consumer protection for the given period. One such example, in light of the limited success achieved in the area of informing and educating consumers (especially in the area of public and financial services and food safety), is the Commission’s three-year Action Plan for the period 1996-1998 aimed at anticipating the effects of technological changes and the opening-up of national markets (COM/95/519 final). The Plan was focused on ten priority areas: improvement of the education and information of consumers; strengthening of their representation; ensuring that consumers’ interests are fully taken into account in the internal market; preparation of consumers for the challenges of the information society;

protection of consumer interests in the supply of essential public utility services; facilitation of consumer access to financial services; improvement of consumer confidence in foodstuffs; encouragement of a practical approach to environment-friendly consumption, and completion, revision and maintenance of the legislative framework. According to the Action Plan, the Commission has put a lot of effort into updating policy objectives to tackle the issues of the information society and especially to regulate sectors like telecommunications, postal services and others.

The next three-year action plan was influenced by the change of nature of markets and consumer expectations. By that time it was clear that more attention should be devoted to the persisting overlaps and interlinks between consumer policy and other policies (see the principle of horizontal implementation). Therefore the Commission's Consumer Policy Action Plan for the period 1999-2001 formulated three main objectives aimed at enhancing consumer policy: a more powerful voice for the consumer through consumer associations; a high level of health and safety for EU consumers, and full respect for the economic interest of consumers throughout the EU (COM/696/98). In the following period, priorities were not shifted, but only formulated to take a broader perspective (Moussis, 1998) and to take into account the forthcoming EU enlargement. The last Consumer Policy Strategy for the five-year period 2002-2006 sets out mid-term objectives designed to help the achievement of the integration of consumer concerns into all other EU policies, to maximise the benefits of the single market for consumers and to prepare for enlargement. These are: a high common level of consumer protection, effective enforcement of consumer protection rules, and involvement of consumer organisations in EU policies (COM/208/2002). Hence, a thorough analysis of the objectives of the EC consumer policy will reflect the problems of implementation and consumer representation suffused through almost a decade of EC consumer protection.

CONSUMER PROTECTION IN THE EUROPEAN UNION ACCESSION PROCESS

It is widely understood that full respect for consumer rights is one of the signs of successful democratic transition. From the economic point of view, the approximation of rules in the field of consumer

protection reflects the level of market transparency and contributes to the overall image of the candidate's successful transition to the market economy. The experience gained in the accession countries proves that the obligation to take on board the EU *acquis* (or body of legislation) has been the main reason for the introduction of new laws on consumer protection and of other regulations, and the foundation of institutions and bodies dealing with consumer policies. This is to say, it has been mostly the result of political will to ensure in a timely manner that consumer protection policy in the accession countries is adjusted to EU legislation (Guidelines, 2000). The same phenomenon is noticeable in Croatia.

For a better understanding of what consumer protection in the process of adjustment implies, it is necessary to mention one of the pillars of the accession process. The European Commission's *White Paper on Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market* presents the essential purpose of Community legislation in each sector, explains the organisational and administrative context in which legislation must operate and recommends a clear order in which the approximation could be made (COM/95/519). In the area of consumer protection policy, this document sets out a list of consumer issues to be dealt with by the candidate countries as they prepare for accession, while the decisions about priorities and speed are explicitly left to the countries to make. In other words, each of the countries has chosen its priority areas, which reflect their economic and political realities.^{iv} In order to anticipate the possible dynamics of the adjustment to the given norms and standards in Croatia it is necessary to emphasise that the *White Paper* gave special attention to the participation of the countries of Central and Eastern Europe in the programmes of legal and technical assistance that would provide for the further development of consumer policies. As early as 1995, there were special projects initiated within the PHARE programme in the candidate countries which aimed at the formation, development and implementation of effective consumer policy.

The second equally important pillar of the accession process are European Agreements, according to which the countries commit themselves to approximating their legislation to that of the EU, particularly in the areas relevant to the internal market, the conceptual reasons for which will be elaborated in the next chapter.

Consumer protection in the process of legal approximation is somewhat different than in other areas, covering the area of protection of economic and legal interests and protection of health and safety,

including the area of consumer representation, information and education. The horizontal nature of consumer policy makes it almost impossible to count all the directives to be transposed into legislation and that concern the consumer in the market. However, it is useful to mention some of the Directives, some of which belong to Stage I priority measures for the approximation of candidate countries' rules to EC legislation.^v Some of the directives comprising the legislative *acquis* of the Chapter 23 on consumer and health protection are the Directive on misleading advertising (84/450/EEC and amendments 97/55/EC, Stage I), the Directive on consumer credit (87/102/EC and amendments 98/7/EC, Stage I), Product liability (85/374/EC), the Directive on unfair terms in consumer contracts (93/13/EEC, Stage I), the Directive on doorstep sales (85/577/EEC), the Directive on indication of prices (79/581/EEC and amendments 98/6/EC, Stage I), the Directive on time-share property (94/47/EC), distance contracts (97/7/EC), the Directive on guarantees for sale of consumer goods and injunctions against unlawful practices (96/107/EC), and others. Specific aspects of consumer protection are also to be found outside Chapter 23 in the areas of food safety and the free movement of goods and services, which once more recalls its horizontal nature.

Case studies: Hungary, Slovakia and Bulgaria

The success of approximation in the three aspects of consumer protection in the accession countries (legislation, implementation and consumer representation) is primarily the reflection of the progress achieved in the field, as well as the differences in tradition and initial socio-economic environment. In order to compare certain aspects of the adjustment process in this domain against those visible in Croatia, it is necessary to present the adjustment process in the accession countries. Parallels will be drawn with Hungary, the so-called first wave country, representing an example of a successful transition to consumer-friendly society, Slovakia, belonging to the same group of accession countries with somewhat different results in the area, and Bulgaria, which represents a so-called second wave (candidate) country still having considerable amount of legal and institutional adjustments to make.

Europe Agreements are the legislative pillar binding the candidate countries to harmonise their laws with EC consumer protection *acquis*. The three countries signed Europe Agreements between 1991

(Hungary) and 1993 (Slovakia and Bulgaria), in the period that implies the limited (although already progressive) understanding of consumer protection in the EC in which health, safety and economic interests of consumers still had a status of *interest*, rather than *right*. This was clearly reflected in the substance of Title VI of the Europe Agreements that the EC signed with the three countries^{vi} which envisages full compatibility of the Hungarian, Slovak and Bulgarian consumer protection systems with that of the Community, and co-operation comprising the exchange of information and experts, access to Community data bases and training operations and technical assistance.

Nevertheless, in its *White Paper* the European Commission stated that the main challenge for the adjustment process lies not in its legislative aspect, but in the adaptation of the public administration and the society so as to make the legislation work (White Paper, 1995). In the same vein, this aspect is confirmed by the European Commission's Action plans. Overall responsibility for the aspect of implementation lies within institutions and their co-ordination, which results in a more or less effective protection of consumers. For the purpose of this work, there are two benchmarks chosen for the evaluation of a successful transition to an efficient system of the protection of consumer's interests and right - the system of market surveillance and the out-of-court dispute settlement system.

The third aspect involves consumers and consumer associations and the information and education of consumers. Experience shows that enforcement and surveillance done by public institutions become highly difficult if the consumers themselves are not alert to the possible failures of the market. Consumer information and information input are, so to speak, the keys to successful consumer protection. Having this in mind, it is important to ensure that consumer associations initiate long-term projects directed at the provision of the necessary information as well as to develop targeted consumer education. On the other hand, ways of stimulating independent research through universities and other centres of excellence need to ensure that expert knowledge is developed on a variety of consumption issues. Consumer organisations should have the legal right to work with public authorities in both creating and monitoring consumer policy and improving its effectiveness. Nevertheless, as the experience of the consumer associations in Hungary, Slovakia and Bulgaria witnesses, the availability of financial sources conditions their empowerment and their final impact on consumer culture.

Table 1 represents a simple systematisation of the three aspects of consumer protection in the three accession countries. It points out the key weaknesses as well as the time required for some segments to start functioning properly.

Table 1 Overview of the aspects of the adjustment to the consumer protection acquis in Hungary, Slovakia and Bulgaria

	Hungary	Slovakia	Bulgaria
Legislative Aspect	Enacted: 1997	Enacted: 1992	Enacted: 1994
Law on Consumer Protection	Entered into force: 1998	Entered into force: 1993	Entered into force: 1999
Implementation Aspect	General Inspectorate of Consumer Protection	Trade Inspectorate	Commission on Trade and Consumer Protection
Market surveillance body ^{vii}	Advantages: contribution to education and information activities Disadvantages: insufficient co-ordination between the bodies (for example local units) responsible for market surveillance	Advantages: work efficiency Disadvantages: lack of co-ordination between the bodies responsible for market surveillance	Advantages: recently strengthened administrative capacities Disadvantages: The law is conducted at an <i>ad hoc</i> basis; inefficient co-ordination and co-operation between the market surveillance bodies; lack of strategic approach to market surveillance
Implementation Aspect	Arbitration Board, 1998/2001	Not existing	Conciliation Commission
Out-of-court dispute settlement formed/started working in a full capacity			1999/still not properly functioning
Consumer representation Aspect	High level of consumer awareness of their rights. Consumer associations are highly efficient and have three potential sources of government funding. ^{viii}	Consumer awareness of their rights develops progressively. The functioning of consumer organisations progressed and strengthened through major legislative changes in 1998 and 1999.	Low consumer awareness on their rights. Consumer associations still lack capacities and the financial commitment from the part of state authorities, which results in an insufficient impact on development of consumer culture.

Source: European Commission Annual Country Reports (1999-2002); Consumer Policy and Consumer Organisations in Central and Eastern Europe, 2000; Compiled by the author

All three countries identified consumer protection as a medium-term priority. By enforcing the law on consumer protection they have set up a general consumer protection system, which initially required stronger efforts in legislative harmonisation. Indeed, as early as 1997 most of the candidate countries had achieved or begun to prepare some fundamental reforms. Nevertheless, the general picture still reflected a too-dispersed consumer protection legislation, administrative barriers, lack of co-ordination and still, very often, dependence upon measures pursuing other policy objectives (International Consumer Research Institute, 2000).

The experience gained by the accession countries testifies to the complexity of the enforcement aspect of consumer policy in the “post-Law” period. Namely, in most of the accession countries it took two to three years for the different segments of implementation of consumer protection to start functioning. The Table also shows that in Slovakia and Bulgaria, and partially in Hungary (like in most of the accession countries), the segment of market surveillance and the co-ordination and co-operation between the responsible bodies has been a bottleneck in the enforcement of consumer protection. The existing theory and the modest literature in the field of consumer protection stresses that the process of development of institutional co-ordination is itself a part of the wider process of development of law and policies directed to consumers (Weatherill, 1997), which leads to the conclusion that an inefficient market surveillance system reflects an inefficient consumer protection system. The second criterion is the out-of-court dispute settlement. It is not possible to give a complete picture of this segment because of the lack of available data in Hungary, Slovakia and Bulgaria. However, the general picture shows persistent problems in the implementation of this segment, too. Therefore all three countries continue with further legislative alignment, which should (in the long run) improve institutional co-ordination and efficiency. The consumer representation aspect shows that the given environment, as for example, continuous financial assistance, conditions the final results of the work of consumer associations.

A system that contributes to the improvement of co-ordination and co-operation is RAPEX, a system for the rapid exchange of information on dangers arising from the use of consumer products that the Community put in place in 1984. RAPEX provides for the transmission of information about urgent measures taken at a national level because of “the serious and immediate risk that product presents for the health or safety of consumers when used in normal and foreseeable condi-

tions” (Weatherill, 1997).^{ix} This system envisages the sharing of information in order to reduce inefficiencies where the same problem is tackled by different authorities in different states taking different approaches. In the accession process, all the countries take part in TRAPEX (*Transitional Rapid Exchange of Information System*), a system set up on the basis of RAPEX with the aim of connecting market surveillance authorities in Central and Eastern European applicant countries.^x In practice, in order to achieve these goals, institutions should have the necessary financial resources, must be transparent and able to apply effective sanctions.

The actual level of consumer protection in the three case countries gives at the same time the picture of the situation in the sector in almost all of the accession countries. Hungary is today considered an optimum case scenario, partly influenced by the socio-economic and cultural background.^{xi} Initial weaknesses in the implementation of consumer policy reflected the lack of competent personnel, lack of technical equipment and lack of consumer awareness of rights, which with time improved through financial assistance projects within the PHARE programme. Consumer protection in Hungary is actually characterised by a smooth functioning of the implementation of consumer policy and by continuous education and information programmes, fully meeting the commitments made in accession negotiations in the domain (COM/2002/700). Slovakia has considerably advanced in the process of legislative alignment and administrative capacity building, which ensures Slovakia’s inclusion into the group of a functioning consumer protection system (COM/2002/700). On the other hand, it took four years for the consumer legislation in Bulgaria to be enforced. The initial weaknesses in its implementation consisted of the uncompleted legislative framework and the low awareness of consumers and public and private institutions of their rights or obligations. The lack of any clear concept and strategy of consumer protection, demonstrated by the low-level activity on the part of the Ministry of Economy and the National Council on Consumer Protection, the consultative body (COM/2002/700), significantly impairs the overall picture of consumer protection in Bulgaria.

CONSUMER PROTECTION IN CROATIA

On the basis of the experience gained in the accession countries it is, *ceteris paribus*, possible to preview the dynamics of the adjust-

ment process in Croatia, for most of the issues common to the transition countries as well as for consumer protection. This is not discussed enough, if at all, in Croatian society.

As far as consumer protection is concerned, the experience from the EU accession process ought to be taken as a sort of “guide” to the institutions to be responsible for the development and enhancement of this field in Croatia. The Stabilisation and Association Agreement between Croatia and the European Communities and their states, just like the European Agreements, stipulates, among other things, the obligation of harmonising with the EC legal system and, by virtue of Article 74, the obligation to adjust its consumer protection to that currently in force in the European Communities (NN 14/2001). In the area of consumer protection, the Agreement provides for the harmonisation and adjustment of Croatian consumer protection law with similar laws applied in the Community; promotion of active consumer protection policies, including more information and development of independent consumer organisations, and effective legal protection of consumers in order to improve the quality of consumer goods and maintain appropriate safety standards. It furthermore recognises the necessity of effective consumer protection for the proper functioning of the market economy and that the protection will depend on development of the administrative infrastructure in order to ensure market surveillance and law enforcement in this field.

Before presenting the tasks and challenges of the development of consumer protection in Croatia, it is necessary to give an overview of the situation on the eve of the initial enforcement of the first Law on Consumer Protection. The aim of protection of consumers was for the first time presented in the Programme of Croatian Government in the year 2000. Since then, the situation in the media has been marked by a progressive introduction of the issue of protection of consumers, especially thanks to the co-operation between consumer associations and the representatives of local and national media (Upitnik, 2003).

The first step forward was the ratification of the SAA in 2001. At the same time within the legislative framework, the importance of consumer protection as a value of democratic societies and for market transparency was not affirmed. Not by chance, similar to the initial legislative environment in the accession countries, legislative environment in Croatia has been fragmented, with numerous laws giving a certain protection, but qualitatively and quantitatively not at the same level of protection guaranteed to consumers in the EC (Baretić, 2002).^{xii}

The adoption of the Law on Consumer Protection (NN 96/2003) in June 2003 was a major step forward towards the systemised development of consumer protection (entering into force in September 2003). Although seriously lagging behind all the trends in the transition countries, this wide-ranging law is significantly harmonised with EC consumer legislation, incorporating the main requirements in the fields of contracts negotiated away from business premises, distance contracts, consumer credit, unfair terms in consumer contracts, timeshare, misleading advertising and indication of prices following the relevant directives that, according to the Commission's *White Paper*, constitute priority measures in the process of adjustment to EC consumer policy. In general, the Law does give the public authorities and consumer organisations a clear legislative basis for dealing with consumer protection, and on the other hand, it forces business and entrepreneurs to understand that protection issues have to be taken into account.

The Law indicates those principally in charge of or responsible for consumer protection in Croatia. It is certainly necessary to mention the National Consumer Protection Programme, which primarily determines the priority areas in the field of consumer protection to be financed from the budget for the period of two years. The Programme, furthermore, stipulates the main principles, goals and priorities of implementation of consumer policy and the scope of use of financial resources needed for the implementation of its task, as well as of financial resources for the development of non-governmental organisations. Since the Programme is to be prepared during the second half of 2003,^{xiii} it is not possible to analyse its priorities and its strengths or weaknesses thoroughly. Nevertheless, results of the research show that no analysis whatsoever of the main problems of consumers and consumer associations in Croatia exists, nor does any "knowledge-base" data previously carried out by the responsible bodies. Therefore it remains unclear on what basis and according to which strategies the national priorities for consumer protection will be chosen.

The Council for Consumer Protection is a consultative body to be established pursuant to the new Law. It will represent a formal body whose task will be to develop a systematic dialogue between the representatives of public institutions, consumer organisations and other institutions relevant for the enhancement of consumer protection in Croatia (Croatian Chamber of Commerce, Croatian Employee Association, research institutions, consumer associations, etc.).^{xiv} Its tasks also include regular evaluation of the implementation of the Consumer Protection Programme.

The institutional aspect implies efficient institutional structures to be set up at the national as well as the local level in order to ensure the effective implementation of the new legislation. On the basis of the Slovak, Bulgarian and Hungarian experience, it is expected that this task will be complex to attain in a timely manner. In view of this, there is a need for further legislative alignment at the level of secondary legislation (directives, regulations) to regulate and give support to implementation of the law, as well as to regulate the relations among and co-ordination of the ministries, the State Inspectorate responsible for market control and finally to the consumer associations. Finally, anticipation and better co-ordination seems the only way in which the bodies responsible for the realisation of consumer protection could strategically approach the field of consumer protection. With this in view, it is important for the responsible institutions in Croatia to join the TRAPEX system.

This leads us to the last but not the least important aspect of consumer protection – consumer associations, led by two major players, the Consumer and the Croatian Association for Consumer's Protection. Past work in this field has been marked by a lack of serious dialogue between consumer associations and the public administration or the business sector in Croatia (Upitnik, 2003). Since 1998 the Ministry of Economy, responsible for this area, has worked closely with the two consumer associations, in order to revise and prepare a legislative framework for the protection of consumers. However, the turning point in the work of consumer associations represented the progress in the relations of Croatia with the EU. This intensified the processes resulting in the increase of the level and substantiality of co-operation with the institutions responsible for consumer protection, which is today characterised as 'active partnership' (Upitnik, 2003). The importance of the development of an active partnership is also reflected in the projects foreseen in the framework of the CARDS programme for the year 2002.^{xv}

This brings us to the question of the financial capabilities of consumer associations, which condition their empowerment and influence. Consumer associations in Croatia have for a long time been excluded from more significant financial assistance projects coming from the national budgetary resources, as well as from international programmes of financial assistance. However, the National Programme does presume financial support, although at the time of the writing of this paper, it is not known to what extent. It has to be admitted that for the foreseeable future all consumer organisations will continue to depend heavily

on external funding, which, to ensure continuity of the services, will need to come from national sources.

In comparison to the PHARE programme, which has offered technical assistance to the candidate countries since 1995, delays in closer co-operation of Croatia with the EU produced a domino effect in delays in all aspects, including the field of consumer protection. Besides the lack of financial assistance offered to consumer organisations from international programmes, technical assistance to be agreed by the public administration has been lagging behind the time dynamics seen in the candidate countries. To give an example, in 2001 and 2002 the opportunity of application for the inclusion in a consumer association support programme financed by the German foundation *Deutsche Gesellschaft fuer technische Zusammenarbeit* (GtZ) ended unsuccessfully because of inadequate time planning on the part of the Ministry of Economy (Brčić Stipčević, 2002), reflecting once more the lack of co-ordination of the institutions responsible for this field.

It is not possible to evaluate the level of consumer awareness of their rights and opportunities stemming from the Law on Consumer Protection in Croatia. Consumer associations will nevertheless have to place special attention on the activities of educating, informing and campaigning in order to develop the concept of an *active* consumer and *active* consumer protection. It is within their responsibility to establish out-of-court dispute settlement bodies (arbitration *ad hoc*), although the Law does not present any further details on it. From the Slovak and Bulgarian experience it is expected that there will be a need for the introduction of additional legislative acts to enable this kind of arbitration to function properly, in addition to that based in the Croatian Chamber of Commerce.

REMARKS AND RECOMMENDATIONS

The mere fact that the Law is coming into force in 2003 leads to the conclusion that Croatia seriously lags behind the process of development of a fundamental civic right, which is confirmed by the preliminary text of the Constitutional Treaty. The obligations stemming from the SAA, as well as the characteristics of consumer policy legislation such as horizontality and heterogeneity, indicate the difficulties that Croatian institutions and organisations dealing with consumer protection might soon face. It is possible to elaborate on the following chal-

lenges of the development of consumer protection and give the following recommendations:

The legislative and institutional sphere of consumer protection:

- Initially, implementation of the Law on Consumer Protection must be the basis for the development of consumer culture in Croatia. Successful implementation implies further legislative changes and the implementation of the consumer dimension into Croatian legislation (positive discrimination in favour of consumers).
- If the experience of candidate countries is reconsidered, success in the development of the protection of consumer rights and interests is determined by success in implementation and by effective market surveillance. Therefore, the institutions responsible for this aspect should consider better co-ordination and co-operation. It is equally important that the process of establishing and making operational all the necessary administrative structures does not lag behind the process of legislative adjustment.
- In order to have a functioning market surveillance system, it is necessary for Croatian institutions to join the TRAPEX system.
- In the light of consumers' legitimate expectations, it is necessary to enhance the work of out-of-court dispute settlement bodies. The reconciliation bodies – actually operating under the Croatian Chamber of Commerce – should be established in a more “neutral” place.
- The consumer associations should play a crucial role in the process of development of consumer culture in Croatia. They should contribute to the proper enforcement of consumer protection measures through their general market surveillance role of a kind of “reality check” (COM/208/2002), especially in the field of services of general interest such as telecommunications, transport and others.
- A system of financial support aimed at strengthening the capacities of consumer associations and possessing the necessary technical expertise should be enhanced on a continuous basis.

The sphere of consumer information, education and research:

- Continuous financial support from national sources to activities related to educating and informing consumers (for example, general publications and specialised material and textbooks for consumer protection training) should enable effective provision of information and

education. Conditions for continued viability of independent professional publications for consumer protection should also be ensured.

- It is necessary to introduce consumer education into school curricula in primary and secondary schools and universities, and to develop teaching materials, teacher training and other supporting activities.
- Research and a knowledge base on consumer protection should be stimulated through different academic programmes.

It is obvious that the consequences of effective consumer protection go beyond the EU accession process itself. The aspiration of Croatia to become an EU candidate country and the successful implementation of the Law on Consumer Protection should influence the awareness of consumer protection and make all the actors more mature and aware of their rights. Nevertheless, the irreversibility of this process and the long-term impact on society as a whole seems to represent even more of a challenge.

-
- i* Food safety issues will not be raised in this paper.
 - ii* Consumer protection legislation has been developed mostly in the form of directives, representing a solution to the barriers identified in the circulation of goods and services in the European internal market.
 - iii* Paragraph 4 of the Programme states that the rights of consumers should be given greater substance not only by information and protection policy but also by action under specific Community policies, such as economy, common agricultural policy, environment, transport, as well as by the approximation of laws, all of which affect the consumer's position (NN C92/1, 1975).
 - iv* Initially, many candidate countries had a problem of overburdened parliamentary timetables or unfamiliarity with the issues, resulting in very slow progress (White Paper, 1995).
 - v* In its 1995 White Paper the Commission presented the legislation in each area in a way that divides Stage I and II measures representing indicative priorities and guides for the effective approximation. Since then, a significant number of the mentioned measures were amended or even disappeared from the list of priorities.
 - vi* European Agreements signed in 1995 were to a certain degree enriched by the information and co-operation aspects.
 - vii* Representing bodies only in the non-food area.
 - viii* Consumer organisations in Hungary currently have three potential financial sources of government funding: the general programme of financial support for all non-government organisations, annual subsidies for consumer organisations stipulated by the Act on Consumer Protection and the General Inspectorate fund. The 1998 Government Decree on the powers of the General Inspectorate specifies that 30% of all penalties extracted from traders should be put into a fund for research, training and other projects by consumer organisations (Consumer Policy and Consumer Organisations in Central and Eastern Europe, p.46).
 - ix* It is, however, important to stress that the objectives of institutional co-ordination of consumer policies cannot be achieved simply by "top-down" Community initiatives.

The “bottom-up” initiatives, the informal cooperation between different agencies and bodies driven by local knowledge can produce a better informed system than can be devised at the more abstract level of legislative planning, remote from practical enforcement (Weatherill, 1997).

- x *The TRAPEX system was set up in May 1999. The Co-ordination Secretariat is situated in Budapest, while the responsibility for organisation lies with the Hungarian General Inspectorate of Consumer Protection.*
- xi *Hungary is one of the first countries in CEE to develop consumer movement, in 1982, and consumer culture in general.*
- xii *With the exception of the Law on Trade, laws do not guarantee protection to consumers as a special category. This leads us to the conclusion that there is no systematic consumer protection policy in Croatia.*
- xiii *According to the revised version of the Implementation Plan of the SAA, the Ministry of Economy should establish a Consumer Protection Agency by October 2003 and the National Consumer Protection Plan six months from the entry into force of Law of Consumer Protection.*
- xiv *Energy Activities Regulation Council is one more body to promote, inter alia, effective dialogue between consumers and regulators.*
- xv *The project Institutional capacity building in the field of consumer protection financed by the CARDS 2002 resources.*

LITERATURE

- Baretić, M., 2002.** “Zaštita potrošača u Europskoj zajednici” u: N. Gavella (et all.). *Europsko privatno pravo*. Zagreb: Pravni fakultet Sveučilišta u Zagrebu.
- Brčić Stipčević, V., 2002.** “Zaštita potrošača – gospodarski aspekti” u: V. Samardžija, ur. *Prilagodbe politikama unutarnjeg tržišta EU: očekivani učinci*. Zagreb: Ministarstvo za europske integracije.
- Commission of the European Communities, 1995a.** *Communication: Priorities for Consumer Policy 1996-1998*. Brussels, COM (95) 519, 31.10. 1995.
- Commission of the European Communities, 1995b.** *White Paper - Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market*. Brussels, COM (95) 163 final, 10.5. 1995.
- Commission of the European Communities, 1998.** *Communication: Consumer Policy Action Plan 1999-2001*. Brussels, COM (1998) 696, 1.12. 1998.
- Commission of the European Communities, 1999a.** *1999 Regular Report on Bulgaria's Progress Towards Accession*. Brussels, COM (1999) 505, 13.10.1999.
- Commission of the European Communities, 1999b.** *1999 Regular Report on Hungary's Progress Towards Accession*. Brussels, COM (1999) 505, 13.10.1999.
- Commission of the European Communities, 1999c.** *1999 Regular Report on Slovakia's Progress Towards Accession*. Brussels, COM (1999) 511, 13.10.1999.
- Commission of the European Communities, 2000a.** *2000 Regular Report on Bulgaria's Progress Towards Accession*. Brussels, COM (2000) 701, 8.11.2000.
- Commission of the European Communities, 2000b.** *2000 Regular Report on Hungary's Progress Towards Accession*. Brussels, COM (2000) 705, 8.11.2000.
- Commission of the European Communities, 2000c.** *2000 Regular Report on Slovakia's Progress Towards Accession*. Brussels, COM (2000) 711, 8.11.2000.
- Commission of the European Communities, 2001a.** *2001 Regular Report on Bulgaria's Progress Towards Accession*. Brussels, SEC (2001) 1744, 13.11.2001.

- Commission of the European Communities, 2001b.** *2001 Regular Report on Hungary's Progress Towards Accession.* Brussels, SEC (2001) 1748, 13.11.2001.
- Commission of the European Communities, 2001c.** *2001 Regular Report on Slovakia's Progress Towards Accession.* Brussels, SEC (2001) 1754, 13.11.2001.
- Commission of the European Communities, 2002a.** *2002 Regular Report on Bulgaria's Progress Towards Accession.* Brussels, COM (2002) 700, 9.10.2002.
- Commission of the European Communities, 2002b.** *2002 Regular Report on Hungary's Progress Towards Accession.* Brussels, COM (2002) 700, 9.10.2002.
- Commission of the European Communities, 2002c.** *2002 Regular Report on Slovakia's Progress Towards Accession.* Brussels, COM (2002) 700, 9.10.2002.
- Commission of the European Communities, 2002d.** *Communication: Priorities for Consumer Policy 2002-2006.* Brussels, COM (2002) 208, 7.5.2002.
- Council** Resolution on a preliminary program of the European Economic Community for a consumer protection and information policy, Official Journal C 092, 25. 4.1975.
- European Communities, 2003.** *Draft Treaty establishing a Constitution for Europe,* 18.7.2003.
- International Consumer Research Institute (ICORI) and International Consumer Policy Bureau, 2000.** *Consumer Policy and Consumer Organisations in Central and Eastern Europe.*
- International Consumer Research Institute (ICORI) and International Consumer Policy Bureau, 2000.** *Guidelines for Consumer Policy in Central and Eastern Europe.*
- Moussis, N., 1998.** *Access to European Union – law, economics, policies.* Brussels: European Study Service.
- Sporazum** o stabilizaciji i pridruživanju, NN 14/01. Zagreb: Narodne novine.
- Stuyck, J., 2000.** "European Consumer Law after the Treaty of Amsterdam: Consumer Policy in or beyond the Internal Market". *Common Market Law Review*, (37), 367-400.
- Upitnik** - odgovori na upitnik gđe Jadranke Kolarević, Udruga Potrošač, Zagreb, kolovoz 2003.
- Weatherill, S., 1997.** *EC Consumer Law and Policy.* London: Longman.
- Zakon** o zaštiti potrošača, NN 96/03. Zagreb: Narodne novine.